IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Kishan Lal through LRs.
vs.
UIT, Jodhpur and another.

S.B.CIVIL SECOND APPEAL NO.36/2003 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 19.8.2002 PASSED BY SHRI TARA CHAND SONI, ADDITIONAL DISTRICT JUDGE NO.1, JODHPUR IN CIVIL APPEAL DECREE NO.76/2000.

DATE OF JUDGMENT ::: 3.5.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr.RK Thanvi, for the appellants no.1 to 4.
Mr. D Kaushik, for the appellant no.5.
Mr.K Joshi, for the respondent no.1.
Mr.BS Bhati, for the respondent no.2.

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BY THE COURT:

In view of the order of this Court dated 7.8.2006, learned counsel for the appellants is permitted to

mention the name of applicant Shri Sheetala Mataji (Kaga Tirth) Trust as party respondent no.2.

Heard learned counsel for the parties.

The appellant/plaintiff has filed this appeal against the concurrent finding of fact recorded by the two courts below in the judgment and decree dated 18.10.2000 passed by the trial court dismissing the plaintiff's suit which was upheld by the first appellate court vide judgment and decree dated 19.8.2002.

Brief facts of the case are that the plaintiff filed suit for mere injunction with specific pleadings that the patta for the property in question was issued on 27.12.1912 and it was in the name of the plaintiff's grand mother - Dhapudi. The plaintiff sought injunction against the respondent UIT, Jodhpur whose case is that the land in question was sold by said Dhapudi to one Mohanlal for a consideration of Rs.170/- on 19.9.1923. Said Mohanlal obtained patta for the land in dispute on the basis of said sale deed. According to UIT, Jodhpur when the land was required for public purpose and for widening the road also, the land was acquired and before the land could have been acquired, the property reached in the hands of legal representative of

Mohanlal. Said legal representative of Mohanlal namely, Mukanlal in lieu of the disputed land obtained another plot in Kamla Nehru Nagar and which is plot no.24 in Sector A.

The trial court as well as the appellate court after considering the evidence of both the parties dismissed the suit of the plaintiff.

Learned counsel for the appellant vehemently submitted that the defendant took the specific plea of acquisition of the property in dispute but did not produce any award or order passed in the acquisition proceedings. The defendant UIT also did not produce the copy of sale deed which is alleged to be executed by Dhapudi in favour of purchaser Mohanlal. According to learned counsel for the appellant, the appellant is in possession and, therefore, the appellant was entitled for relief of injunction. Learned counsel for the appellant also submitted that the appellate court has imposed exemplary costs of Rs.3,000/- which could not have been done by the appellate court in view of Section 35A CPC wherein right of imposing cost is not given to the appellate court specifically.

I considered the submissions of learned counsel for the parties and perused the reasons given by the two courts below.

Firstly, the two courts below considered the evidence and thereafter recorded the finding of fact against the appellant and dismissed the suit which is not vitiated by any reason and their exists no ground for interference by this Court in such finding of fact. Be it as it may be, the fundamental defect in the suit of the plaintiff is that the plaintiff himself filed the suit with absolutely false facts that the plaintiff is owner of the suit property because he is heir of his grand mother Dhapudi. He is owner of the property because the patta of the land in question was in the name of Dhapudi and obviously by succession, he got the property. In the evidence, he himself admitted the case of the defendant that Dhapudi sold the suit property to Mohanlal. The court below rightly held that the plaintiff nowhere stated that when the suit property was sold in the year 1925, then how he got the possession of the suit property back. The suit for injunction could have been dismissed merely on the ground of conduct of the appellant who suppressed such an important material fact from the Court. The other reasons given by the courts below are also very cogent reasons given for dismissal of the suit.

So far as imposition of costs is concerned, that has rightly been imposed by the appellate court because

of the reason that the appellate court can also impose the costs when it finds litigation as frivolous. The appeal was filed frivolously and, therefore, the appeal was dismissed with costs and the appellate court imposed cost in appeal and not in the suit. The suit was dismissed by the trial court and the appeal by the appellate court, therefore, the costs was imposed for filing frivolous appeal.

In view of the above, I do not find any substantial question of law involved in this appeal.

Consequently, this appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya